

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201603843	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/17/2016 10:07 PM	Location of Incident: Brighton Avenue and Butler Terrace, in Staten Island; en route to the 120th Precinct stationhouse	Precinct: 120	18 Mo. SOL 10/17/2017	EO SOL 10/17/2017	
Date/Time CV Reported Thu, 04/28/2016 6:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/04/2016 12:44 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rudy Anzalone	27189	945472	120 PCT
2. LT John Ryan	00000	940685	120 PCT
3. POM Michael Dalbero	28746	948843	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT John Ryan	Abuse: Lieutenant John Ryan entered a lot located at the intersection of Brighton Avenue and Butler Terrace in Staten Island.	
B.POM Rudy Anzalone	Abuse: Police Officer Rudy Anzalone entered a lot located at the intersection of Brighton Avenue and Butler Terrace in Staten Island.	
C.POM Michael Dalbero	Abuse: Police Officer Michael Dalbero entered a lot located at the intersection of Brighton Avenue and Butler Terrace, in Staten Island.	
D.LT John Ryan	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Lieutenant John Ryan stopped § 87(2)(b)	
E.POM Rudy Anzalone	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone stopped § 87(2)(b)	
F.POM Michael Dalbero	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero stopped § 87(2)(b)	
G.LT John Ryan	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Lieutenant John Ryan stopped § 87(2)(b)	
H.POM Rudy Anzalone	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone stopped § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.POM Michael Dalbero	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island Police Officer Michael Dalbero stopped § 87(2)(b)	
J.POM Rudy Anzalone	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone questioned § 87(2)(b)	
K.POM Rudy Anzalone	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone questioned § 87(2)(b)	
L.POM Michael Dalbero	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero questioned § 87(2)(b)	
M.POM Michael Dalbero	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero questioned § 87(2)(b)	
N.POM Rudy Anzalone	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island Police Officer Rudy Anzalone searched the vehicle in which § 87(2)(b) was an occupant.	
O.POM Michael Dalbero	Discourtesy: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)	
P.POM Michael Dalbero	Discourtesy: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)	
Q.POM Michael Dalbero	Abuse: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero threatened § 87(2)(b) with the use of force.	
R.POM Rudy Anzalone	Abuse: En route to the 120th Precinct stationhouse, Police Officer Rudy Anzalone questioned § 87(2)(b)	
S.POM Michael Dalbero	Discourtesy: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)	
T.POM Michael Dalbero	Abuse: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero threatened § 87(2)(b) with the use of force.	
U.POM Michael Dalbero	Abuse: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero questioned § 87(2)(b)	

Case Summary

This case was delayed because the sole complainant, § 87(2)(b) is incarcerated. On April 28, 2016, § 87(2)(b) filed this complaint with IAB from the § 87(2)(b), generating original log #16-14999. The complaint was forwarded to the CCRB, where it was received on May 4, 2016. On May 5, 2016 § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

§ 87(2)(b) scheduled an appointment to appear at the CCRB for a Video Teleconference with § 87(2)(b) on May 12, 2016. § 87(2)(b), § 87(2)(g)

Finally, § 87(2)(b) provided a statement to the CCRB on June 3, 2016.

On April 17, 2016, at approximately 6:00 or 7:00 PM, § 87(2)(b) and § 87(2)(b) sat in § 87(2)(b)'s vehicle, which was parked inside of a fenced-in lot located at the intersection of Brighton Avenue and Butler Terrace, in Staten Island. § 87(2)(b) lived nearby on Butler Terrace. § 87(2)(b) and § 87(2)(b) smoked a marijuana cigarette in the vehicle and then remained there for several hours. At approximately 10:00 PM, as § 87(2)(b) rolled another marijuana cigarette, Lt. John Ryan, PO Rudy Anzalone, and PO Michael Dalbero of the 120th Precinct entered the lot (**Allegations A, B, and C**), stopped § 87(2)(b) (**Allegations D, E, and F**) and § 87(2)(b) (**Allegations G, H, and I**), and placed both § 87(2)(b) and § 87(2)(b) under arrest. PO Anzalone allegedly asked § 87(2)(b) and § 87(2)(b) if they had weapons inside of the vehicle (**Allegations J and K**), and PO Dalbero allegedly asked § 87(2)(b) and § 87(2)(b) if they had guns on their persons (**Allegations L and M**). PO Anzalone then searched § 87(2)(b)'s vehicle (**Allegation N**) and recovered a knife. § 87(2)(b)'s father, identified as § 87(2)(b) § 87(2)(b) then approached the lot and saw what was taking place there. Subsequently, an unidentified individual known to § 87(2)(b) only as § 87(2)(b) then approached the lot and said that he recognized one of the officers. PO Dalbero allegedly said to § 87(2)(b) “Mind your fucking business” (**Allegation O**). § 87(2)(b) did not speak, but PO Dalbero placed his hand on § 87(2)(b)'s chest and then allegedly said to § 87(2)(b) “Shut your fucking mouth” (**Allegation P**). PO Dalbero allegedly unstrapped his holster and removed his firearm partway, so that the muzzle remained inside of the holster (**Allegation Q**).

An additional unit from the 120th Precinct then responded to the location in order to transport § 87(2)(b) to the 120th Precinct stationhouse. Lt. Ryan, PO Anzalone, and PO Dalbero transported § 87(2)(b) to the stationhouse in their RMP. En route, the PO Anzalone pulled over the RMP and then allegedly asked § 87(2)(b) if he had information about guns, narcotics, or other criminal activities taking place in the area (**Allegation R**). PO Dalbero allegedly said that § 87(2)(b) could assist the officers “instead of being a dickhead” (**Allegation S**), said “We can fuck you up” (also **Allegation S**; **Allegation T**), and said that § 87(2)(b)'s arrest was “bullshit” (also **Allegation S**). PO Dalbero said that they would let § 87(2)(b) go if he could tell the

officers where to find someone with narcotics or illegal guns and asked if § 87(2)(b) had any such information (**Allegation U**). § 87(2)(b) did not provide any such information and was transported to the stationhouse for processing.

There is no video associated with this case.

Mediation, Civil and Criminal Histories

- § 87(2)(b)
- § 87(2)(b), § 87(2)(c)
- § 87(2)(b), § 87(2)(c)
- On July 11, 2016, the Office of the Comptroller informed the undersigned that no notice of claim has been filed in regards to this incident.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b)
- Lt. Ryan, who has been a member of the NYPD for ten years, has been a subject in twenty previous CCRB cases. In CCRB case #200700970 it was alleged that Lt. Ryan stopped § 87(2)(b). That allegation was exonerated. In CCRB case #200818682, it was again alleged that Lt. Ryan stopped § 87(2)(b). That complaint was withdrawn. A third stop was alleged against Lt. Ryan in CCRB case #201005689. That allegation was unsubstantiated. A fourth stop allegation, from CCRB case #201500285, was exonerated. One allegation made against Lt. Ryan has been substantiated: a vehicle stop in CCRB case #201410419. In regards to this disposition the CCRB recommended charges, but the NYPD disposition is not yet available.
- PO Anzalone, who has been a member of the NYPD for eight years, has been a subject in six previous CCRB cases. In CCRB case #201002483 it was alleged that PO Anzalone entered a home. That complaint was withdrawn. In CCRB case #201017878 it was alleged that PO Anzalone questioned § 87(2)(b). That allegation was unsubstantiated. In CCRB case #201507842, a stop alleged against PO Anzalone was exonerated. No allegations made against PO Anzalone have been substantiated.
- PO Dalbero, who has been a member of the NYPD for six years, has been a subject in three previous CCRB cases. In CCRB case #201114600, an allegation that PO Dalbero drew his gun was exonerated. In CCRB case #201507842, a stop alleged against PO Dalbero was exonerated. No allegations made against PO Dalbero have been substantiated.

Potential Issues

- As noted above, § 87(2)(b) identified a victim of alleged misconduct only as “§ 87(2)(b) § 87(2)(b) stated he did not know § 87(2)(b) actual name and could not provide any contact information for him, although he believed § 87(2)(b) lived nearby to § 87(2)(b) According to § 87(2)(b) (Board Review 01), § 87(2)(b) stated that he recognized either PO Anzalone or PO Dalbero – § 87(2)(b) did not recall which – from a previous encounter. However, neither officer’s arrest history provided further information for § 87(2)(b) who might be § 87(2)(b) Ultimately, § 87(2)(b) believed § 87(2)(b) would be able to provide contact information for § 87(2)(b)
- § 87(2)(b) could not provide any detailed contact information for § 87(2)(b) or his father, but § 87(2)(b) believed that § 87(2)(b) resides with his parents on § 87(2)(b) in Staten Island. A June 7, 2016 DMV search revealed that § 87(2)(b) was not incarcerated. The same day, a letter was mailed to § 87(2)(b) in Staten Island, the address provided on his arrest report. A June 7, 2016 Cole’s Directory search returned negative results for anyone with the last name § 87(2)(b) at that address. A June 7, 2016 BADS search provided three phone numbers for § 87(2)(b) as well as a new address, § 87(2)(b) in Staten Island. A DMV search performed on June 7, 2016 provided an address in Dobbs Ferry, NY. A June 7, 2016 CTS search returned three individuals names § 87(2)(b) two were ruled out based on age and one, with no age provided, was listed at § 87(2)(b) in Staten Island. Letters were mailed to § 87(2)(b) in Staten Island and the Dobbs Ferry address on June 7, 2016. Also on June 7, 2016, Mgr. Almeyda performed Lexis Nexis and CLEAR searches for § 87(2)(b) and other residents of § 87(2)(b) in Staten Island. The searches indicated that § 87(2)(b) s father is § 87(2)(b) The searches also provided five new mailing addresses, an email address for § 87(2)(b) and three new phone numbers. Lastly, on June 7, 2016, a Google search revealed that the Dobbs Ferry address was for § 87(2)(b). A June 8, 2016 Cole’s Directory search confirmed that § 87(2)(b) § 87(2)(b) lives at § 87(2)(b) in Staten Island, but no phone number was listed. On June 8, 2016, calls were placed to the six possible numbers obtained for § 87(2)(b) and/or § 87(2)(b) § 87(2)(b) answered at one of the numbers but stated he did not know § 87(2)(b) or § 87(2)(b) and did not have contact information for them; three of the numbers were not in service; one of the numbers did not connect; and one of the numbers rang indefinitely with no voicemail system set up. Also on June 8, 2016 letters were mailed to the additional mailing addresses obtained from Lexis Nexis and CLEAR, and an email was sent. Further calls were placed on June 10, 2016. Also on June 10, 2016, Mgr. Almeyda performed Lexis Nexis and CLEAR searches for § 87(2)(b) § 87(2)(b) at § 87(2)(b) which returned five new phone numbers. Calls were placed to these five numbers on June 10, 2016. At one, § 87(2)(b) stated his last name was § 87(2)(b) but he stated he did not live on Butler Terrace, did not have a son named § 87(2)(b) and had no knowledge of the incident in question. Three of the numbers were not in service. The fifth number connected to a voicemail system for § 87(2)(b),” and a voicemail message was left. Further calls were placed to the new five phone numbers on July 13, 2016, to the same results. A second voicemail message was left for “§ 87(2)(b).” Also on June 13, 2016, final please call letters were mailed to both § 87(2)(b) and § 87(2)(b) § 87(2)(b) at all

nine of the possible addresses obtained for them. A second email was sent. On June 15, § 87(2)(b) named § 87(2)(b) contacted the undersigned from a blocked phone number. She stated she has a son named § 87(2)(b) § 87(2)(b) but he had been § 87(2)(b) and was not involved in the April 17, 2016 incident in question. She also stated she had no knowledge of anyone named § 87(2)(b) § 87(2)(b) or who resided on Butler Terrace. On June 15, 2016 further calls were placed to the possible phone numbers for § 87(2)(b) § 87(2)(b) three were not in service, one rang indefinitely, and a third voicemail message was left for § 87(2)(b). On June 16, 2016, the undersigned contacted § 87(2)(b) of the § 87(2)(b) in Dobbs Ferry, NY. § 87(2)(b) stated that § 87(2)(b) was a resident of the program and was discharged in July, 2013 to his family, who lived at § 87(2)(b) § 87(2)(b) in Staten Island, NY. On July 20 further calls were placed to the only two working numbers for § 87(2)(b) § 87(2)(b) one rang indefinitely and another voicemail message was left for § 87(2)(b) at the other. On July 21, 2016, third letters were mailed to § 87(2)(b) and § 87(2)(b) § 87(2)(b) and a third email was sent. A final voicemail message was left for § 87(2)(b) on June 2, 2016. Letters mailed to § 87(2)(b) and § 87(2)(b) § 87(2)(b) on Richmond Terrace and Henderson Avenue in Staten Island have been returned to the CCRB. However, none of the letters mailed to either individual at § 87(2)(b) – their confirmed address – has been returned.

- Given that these efforts to contact § 87(2)(b) and/or § 87(2)(b) § 87(2)(b) were ultimately unsuccessful, the investigation was unable to obtain a statement from either individual. Additionally, the investigation was therefore unable to identify or obtain a statement from § 87(2)(b).

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority:** a search allegation is not pleaded. § 87(2)(b) stated that after he and § 87(2)(b) exited the vehicle, PO Dalbero searched him. As addressed below in the analysis of Allegations D through I, the investigation determined by a preponderance of the evidence that as soon as the officers approached the vehicle inside of the lot, § 87(2)(b) and § 87(2)(b) were under arrest. Therefore the search of § 87(2)(b)'s person was conducted incident to lawful arrest.

Allegation A—Abuse of Authority: Lieutenant John Ryan entered a lot located at the intersection of Brighton Avenue and Butler Terrace in Staten Island.

Allegation B—Abuse of Authority: Police Officer Rudy Anzalone entered a lot located at the intersection of Brighton Avenue and Butler Terrace in Staten Island.

Allegation C—Abuse of Authority: Police Officer Michael Dalbero entered a lot located at the intersection of Brighton Avenue and Butler Terrace, in Staten Island.

As noted above, § 87(2)(b) stated that for several hours on the evening of April 17, 2016, he and § 87(2)(b) were seated inside § 87(2)(b)'s vehicle, which was parked inside an empty triangular lot located at the intersection of Brighton Avenue and Butler Terrace, in Staten Island. § 87(2)(b) viewed several images of the lot (Board Review 02) and confirmed its location during his VTC interview. The lot, bordered by Butler Terrace, Brighton Avenue, and a wooded

area, was surrounded by a low chain link fence. It was, § 87(2)(b) believed, owned by a business for which § 87(2)(b)'s father worked; § 87(2)(b) did not know the name of the business. § 87(2)(b) also believed that § 87(2)(b)'s father had previously obtained permission to use the lot for personal storage. § 87(2)(b)'s vehicle was parked approximately one car-width away from the fence on the Butler Terrace side of the lot and faced uphill, toward the wooded area.

§ 87(2)(b) and § 87(2)(b) had both purchased new cars that day; both vehicles were parked in the lot. In celebration of their purchases, § 87(2)(b) and § 87(2)(b) smoked a marijuana cigarette inside of § 87(2)(b)'s new vehicle at approximately 6:00 PM or 7:00 PM. After smoking the marijuana cigarette, they § 87(2)(b) remained in the vehicle, parked inside of the lot, for several hours, conversing. § 87(2)(b) and § 87(2)(b) did not smoke any marijuana after 6:00 PM or 7:00 PM. They did not consume any alcoholic beverages or use any other narcotics during this period of time. They did not leave the vehicle at any point during that period of time. The vehicle's windows were closed.

At approximately 10:00 PM, § 87(2)(b) decided to roll a second marijuana cigarette. He had with him rolling papers and approximately one eighth-ounce of marijuana, which he stored in a small, clear Ziploc bag. He was seated in the vehicle's front passenger's side seat and § 87(2)(b) was seated in the driver's seat. The vehicle's windows were closed. § 87(2)(b) turned on the vehicle's interior light because § 87(2)(b) could not see well enough to roll the marijuana cigarette. The vehicle's windows were not tinted. § 87(2)(b) then began rolling a marijuana cigarette.

Before § 87(2)(b) finished rolling the marijuana cigarette, § 87(2)(b) announced that he saw police officers. § 87(2)(b) looked up and saw that an unmarked RMP was parked on Butler Terrace, just on the other side of the fence. § 87(2)(b) placed the marijuana and rolling paper, which were not yet rolled into a cigarette, onto the arm rest next to him.

PO Anzalone exited the RMP and approached the gate of the lot, which was located on Butler Terrace. The gate was closed with a chain, but not a lock. PO Anzalone removed the chain from the gate, opened the gate, and entered the lot. He then approached the driver's side of § 87(2)(b)'s vehicle, shone the flashlight into the driver's side window, and tapped on the window. PO Anzalone then used a strobe setting on his flashlight to signal to the RMP. PO Dalbero exited the RMP, entered the lot via the gate, and approached the passenger's side of § 87(2)(b)'s vehicle. § 87(2)(b) stated that later on, after he and § 87(2)(b) were placed in handcuffs, Lt. Ryan also entered the lot.

PO Anzalone (Board Review 03), the RMP's operator, stated that as he drove southbound on Brighton Avenue, the RMP passed by a triangular lot located at the intersection of Brighton Avenue and Butler Terrace. It was dark outside, and PO Anzalone saw a vehicle parked inside the lot with its interior light turned on. PO Anzalone's suspicion was raised because there had been a recent pattern of unattended vehicles being burglarized. PO Anzalone continued on Brighton Avenue until the lot was out of sight. He then made a U-turn, returned to the intersection headed northbound on Brighton Avenue, and made a left, onto Butler Terrace. He drove uphill on Butler Terrace, headed westbound, and parked the RMP on Butler Terrace, next to the lot's gate.

PO Anzalone, PO Dalbero, and Lt. Ryan exited the RMP together. PO Anzalone smelled marijuana immediately upon exiting the RMP and suspected that it was emanating from the aforementioned vehicle, inside of the lot. The vehicle with the light on was parked at the northwestern end of the lot, near Butler Terrace. The vehicle was facing uphill, toward the wooded area, so that PO Anzalone and the officers could see its passenger's side and rear from their position near the gate. PO Anzalone could not see what anyone was doing inside of the vehicle. The lot appeared to PO Anzalone to be private. It was surrounded by a fence but the gate was not locked; it was held closed with either a handle or a chain. PO Anzalone was not sure if the gate was already open or not. PO Anzalone, PO Dalbero, and Lt. Ryan entered the lot via the gate. During his CCRB interview, PO Anzalone stated that although he described the lot as private, he considered § 87(2)(b) and § 87(2)(b) to be in a public place because the vehicle was outside, § 87(2)(b) and § 87(2)(b) were visible from street, and because the gate was unlocked.

PO Dalbero (Board Review 04) was seated in the rear passenger's seat of the RMP. From Brighton Avenue, PO Dalbero observed two males seated in a vehicle inside of the lot located at the intersection of Brighton Avenue and Butler Terrace. When PO Dalbero observed the vehicle inside of the lot, the RMP was approximately ten to fifteen feet away from the lot. The vehicle was situated in the center of the lot. It did not bear any license plate. The vehicle's interior light was on, and it was dark out, allowing PO Dalbero to see clearly into the inside of the vehicle. PO Dalbero saw two males, later identified as § 87(2)(b) and § 87(2)(b) seated in the front seats of the vehicle, and smoking what appeared to be a marijuana cigarette. They passed the marijuana cigarette from hand to hand. PO Dalbero believed it was marijuana on the basis of the manner in which they passed the cigarette back and forth to one another, which was consistent with his experience in observing individuals illegally smoking marijuana.

PO Anzalone turned the RMP onto Butler Terrace and parked the RMP. The RMP's windows were down and PO Dalbero smelled the odor of marijuana. He believed it was coming from the vehicle in the lot. PO Dalbero, PO Anzalone, and Lt. Ryan exited the RMP together. Upon exiting, PO Dalbero smelled the odor of marijuana coming from the direction of the vehicle, inside of lot, and saw smoke inside of the vehicle. The lot appeared to PO Dalbero to be a private lot. It was surrounded by a chain link fence, and there was a gate on the Butler Terrace side. PO Dalbero did not recall seeing any lock, chain, or any other closure mechanism on the gate. However, PO Dalbero considered the vehicle's occupants to be smoking marijuana in public because the lot was outside and in public view. PO Dalbero, PO Anzalone, and Lt. Ryan exited the RMP together, entered the lot through the gate, and approached the vehicle.

Lt. Ryan (Board Review 05) stated that as the RMP passed by the intersection of Brighton Avenue and Butler Terrace, he observed two males sitting inside of a vehicle in what appeared to him to be an "open parking lot" with several vehicles parked inside. The RMP was between thirty and forty feet away from the vehicle inside of the lot when Lt. Ryan first observed it. Lt. Ryan then observed that one of the two males, both seated in the vehicle's front seats, passed what appeared to be a lit marijuana cigarette to the other. Lt. Ryan could see the glowing tip of the cigarette. The RMP's windows were open and Lt. Ryan smelled a strong odor of marijuana. Lt. Ryan believed that the odor of marijuana was coming from the direction of the vehicle inside the

lot. PO Anzalone informed Lt. Ryan that he had also observed the individuals inside of the vehicle passing a lit marijuana cigarette. PO Anzalone parked the RMP adjacent to the lot, facing uphill on Butler Terrace. The lot appeared to be abandoned and unkempt; it had refuse strewn about and the grass was overgrown. There was a chain link fence around the lot and a gate on the Butler Terrace side. The gate was open. Lt. Ryan did not remember if the gate had any lock, chain, or other closing mechanism on it. At this point Lt. Ryan planned to enter the lot in order to investigate further. Lt. Ryan considered the individuals to be smoking marijuana in public, as there was public access to the lot and anyone walking down the street could have seen them smoking marijuana.

As addressed in greater detail below, in the analysis of Allegations D through I, according to Lt. Ryan, PO Anzalone and PO Dalbero exited the RMP and entered the lot ahead of him. They did not have to move any chain or any other mechanism in order to open the gate. Lt. Ryan then also entered the lot.

As noted in *People v. Vernon* 954 N.Y.S.2d 835 (Board Review 06), the fourth amendment of the United States Constitution protects not only against warrantless entry into the home but also against such warrantless entry into private areas surrounding the home, known as “curtilage.” The Supreme Court has identified four factors that help resolve whether an area outside the house is within its curtilage: its proximity to the house, whether it is within an enclosure that surrounds the house, the nature of the uses to which it is put, and the steps that the resident takes to protect the area from observation.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation D: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Lieutenant John Ryan stopped § 87(2)(b)

Allegation E: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone stopped § 87(2)(b)

Allegation F: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero stopped § 87(2)(b)

Allegation G: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Lieutenant John Ryan stopped § 87(2)(b)

Allegation H: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone stopped § 87(2)(b)

Allegation I: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island Police Officer Michael Dalbero stopped § 87(2)(b)

As noted above, § 87(2)(b) stated that he was rolling a marijuana cigarette inside of § 87(2)(b)'s vehicle when the officers arrived, but that he and § 87(2)(b) were not smoking marijuana at that time and had not smoked any marijuana inside of the vehicle for several hours. Also as noted above, § 87(2)(b) stated that when the officers approached the vehicle, he placed the unrolled marijuana cigarette on one of the arm rests next to him. The officers then appeared at the side of the vehicle and initiated an interaction with § 87(2)(b) and § 87(2)(b). Ultimately, § 87(2)(b) and § 87(2)(b) both exited the vehicle and were placed under arrest.

Counter to § 87(2)(b)'s testimony, both Lt. Ryan and PO Dalbero stated that from outside of the lot, they observed § 87(2)(b) and § 87(2)(b) passing a lit cigarette of some sort between them, and that they observed smoke inside of the vehicle. PO Dalbero stated that this manner of passing the cigarette was consistent with his experience in observing individuals smoking marijuana. Additionally, all three officers testified that prior to entering the lot they smelled the odor of marijuana emanating from the vehicle, and that after entering the lot and approaching the vehicle, the odor grew stronger. For his part, PO Anzalone stated that he was familiar with the odor of marijuana based on his training and his experience, which included multiple previous arrests. Ultimately, the officers testified that upon their approach to the vehicle, they believed that the occupants were smoking marijuana in what they considered to be a public place.

According to both PO Anzalone and PO Dalbero, they and Lt. Ryan entered the lot together and approached the vehicle. When the three officers arrived at the vehicle, PO Anzalone and PO Dalbero observed that one of the occupants of the vehicle held a lit marijuana cigarette. The officers then ordered § 87(2)(b) and § 87(2)(b) from the vehicle, at which point both men were placed under arrest for smoking marijuana.

It must be noted that there is a gap in Lt. Ryan's testimony. Lt. Ryan stated that when PO Anzalone and PO Dalbero exited the RMP in order to approach the lot, Lt. Ryan attempted to exit the RMP at the same time but had difficulty doing so because the RMP was parked on a steep hill. PO Dalbero and PO Anzalone entered the lot ahead of him as he attempted to exit the RMP. Lt. Ryan was not watching them after they entered the lot as his attention was focused on exiting the RMP. Lt. Ryan did not recall exactly what caused him to have difficulty exiting the RMP other than that the RMP was parked on a steep hill. The other officers did not have difficulty exiting the RMP. Lt. Ryan did not recall specifically how long it took him to exit the RMP. When Lt. Ryan succeeded in exiting the RMP he looked into the lot and saw that § 87(2)(b) and § 87(2)(b) had exited the vehicle. PO Anzalone and PO Dalbero were placing them both in handcuffs.

As noted above, in *Potential Issues*, the investigation was unable to obtain statements from § 87(2)(b) who could testify in regards to whether or not he and § 87(2)(b) were smoking

marijuana at the time, or from § 87(2)(b) or § 87(2)(b) § 87(2)(b) who might be able to testify in regards to the presence of the odor of marijuana or the lack thereof.

The UF-61 and arrest reports for § 87(2)(b) and § 87(2)(b) (Board Review 07 through 09) note that § 87(2)(b) was observed to be smoking a lit marijuana cigar and that he was observed to pass it to § 87(2)(b). Further, according to the criminal court complaint for § 87(2)(b)'s arrest (Board Review 10), § 87(2)(b) said to PO Anzalone, in sum and substance, "It was a celebratory blunt, we both just purchased cars." Property vouchers for the arrests (Board Review 11) note that the officers recovered marijuana packaged in a cigar and additional marijuana packed in a Ziploc bag.

According to *People v. De Bour 40 N.Y2d 201*, reasonable suspicion of criminality is required for a forcible stop (Board Review 12). Further, according to *New York State Penal Law Section 221.10* (Board Review 13), a person is guilty of criminal possession of marijuana in the fifth degree when he knowingly and unlawfully possesses marijuana in a public place, as defined in section 240.00 of the penal law, and such marijuana is burning or open to public view. *New York State Penal Law Section 240.00* (Board Review 14) defines a public place as a place to which the public or a substantial group of persons has access.

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation J: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone questioned § 87(2)(b)
Allegation K: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Rudy Anzalone questioned § 87(2)(b)

§ 87(2)(b) stated that after PO Anzalone approached § 87(2)(b)'s vehicle, PO Anzalone asked, through the closed window, if § 87(2)(b) or § 87(2)(b) had weapons inside the vehicle.

PO Anzalone stated that he did not ask either § 87(2)(b) or § 87(2)(b) whether they had any weapons inside of the vehicle. Further, PO Anzalone stated that he did not have any specific concern that the vehicle's occupants had any weapons on their persons.

Neither Lt. Ryan nor PO Dalbero recalled whether or not PO Anzalone asked § 87(2)(b) or § 87(2)(b) if they had weapons inside of the vehicle.

§ 87(2)(b), § 87(2)(g)

Allegation L: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero questioned § 87(2)(b)

Allegation M: Abuse of Authority—At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero questioned § 87(2)(b)

§ 87(2)(b) alleged further that after he and § 87(2)(b) exited the vehicle, PO Dalbero asked them both if they had guns on their persons.

PO Dalbero did not recall if he ever asked § 87(2)(b) or § 87(2)(b) about whether they had guns on their persons.

Neither Lt. Ryan nor PO Anzalone recalled if PO Dalbero ever asked § 87(2)(b) or § 87(2)(b) if either of them was in possession of a gun.

§ 87(2)(b), § 87(2)(g)

Allegation N—Abuse of Authority: At the intersection of Brighton Avenue and Butler Terrace in Staten Island Police Officer Rudy Anzalone searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that after § 87(2)(b) and § 87(2)(b) exited § 87(2)(b)'s vehicle, PO Anzalone searched the vehicle's interior and recovered a knife from the open center console. § 87(2)(b) stated that PO Anzalone searched the vehicle before § 87(2)(b) and § 87(2)(b) were placed in handcuffs, whereas PO Anzalone did not recall specifically when he searched the vehicle. Both PO Dalbero and PO Anzalone testified that as soon as § 87(2)(b) and § 87(2)(b) were removed from the vehicle, they were both under arrest for smoking marijuana. It is undisputed that after § 87(2)(b) and § 87(2)(b) exited the RMP, and before PO Anzalone searched the vehicle, PO Dalbero recovered a Ziploc bag of marijuana from § 87(2)(b)'s pants pocket. Additionally, Lt. Ryan stated that the officers recovered marijuana, which was in plain view, from inside of the vehicle. The above-referenced property vouchers (Board Review 11) confirm that the officers recovered marijuana packaged in a cigar and marijuana packaged in a Ziploc bag.

According to *People v. Ellis* 462 N.Y.S.2d 867 (Board Review 15), when a police officer has made a lawful custodial arrest of the occupant of an automobile, he or she may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile.

Further, according to *People v. Johnson* 901 N.Y.S.2d 909 (Board Review 16), the odor of marijuana alone is sufficient to provide police who are trained and experienced in the use of marijuana with probable cause to search a vehicle.

§ 87(2)(b), § 87(2)(g)

Allegation O—Discourtesy: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after PO Anzalone searched the vehicle, § 87(2)(b)'s neighbor, whom § 87(2)(b) knew only as "§ 87(2)(b)" walked downhill on Butler Terrace and entered the lot. § 87(2)(b) told § 87(2)(b) that the officers were arresting him and § 87(2)(b) illegally, and § 87(2)(b) stated that he recognized either PO Anzalone or PO Dalbero – § 87(2)(b) did not recall which – as he had previously sued one of the officers' former partners for an illegal search of some sort. § 87(2)(b) stated that he had won a settlement as a result of the lawsuit. PO Dalbero then said to § 87(2)(b) "Mind your fucking business." As noted above, § 87(2)(b) also stated that § 87(2)(b)'s father approached the lot separately from § 87(2)(b).

PO Dalbero recalled that after PO Anzalone searched the vehicle, a relative of § 87(2)(b)'s or § 87(2)(b)'s then approached the lot's gate, asked what was taking place, was informed that § 87(2)(b) and § 87(2)(b) were under arrest, and then departed. However, PO Dalbero did not recall any other individual approaching the lot at any point. PO Dalbero did not say to anyone who approached the lot, "Mind your fucking business." PO Dalbero did not recall any individual who approached the lot ever saying that he was familiar with Lt. Ryan, PO Dalbero, or PO Anzalone from a previous encounter.

PO Anzalone stated that at some point during this incident – he did not recall exactly when – § 87(2)(b) approached the lot, walking downhill on Butler Terrace. He was recording the incident on a cell phone and yelling that the officers were breaking the law. This individual did not enter the lot. PO Anzalone never learned this individual's identity. This individual never made any statement to the effect that he was familiar with PO Anzalone, PO Dalbero, or Lt. Ryan. PO Anzalone told him that he could film all he wanted but to give the officers space. PO Anzalone did not hear PO Dalbero say to this individual, "Mind your fucking business."

According to Lt. Ryan, two additional males approached the lot during the incident. Lt. Ryan did not recall what their relationships to § 87(2)(b) or § 87(2)(b) were or how they were familiar with § 87(2)(b) or § 87(2)(b). Lt. Ryan did not remember if these individuals appeared at the same time or separately. Lt. Ryan did not recall what those individuals said or did and did not recall if these individuals entered the lot or remained outside. He did not remember either

individual appearing to record a video on a cell phone. He did not remember either individual saying that they were familiar with any of the three officers present from any previous interaction. Lt. Ryan did not witness PO Dalbero say to either of those individuals, “Mind your fucking business.”

§ 87(2)(b), § 87(2)(g)

Allegation P—Discourtesy: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)
Allegation Q—Abuse of Authority: At the intersection of Brighton Avenue and Butler Terrace in Staten Island, Police Officer Michael Dalbero threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that after PO Dalbero spoke discourteously to § 87(2)(b) PO Dalbero placed a hand on § 87(2)(b)'s chest and told him not to move. § 87(2)(b) did not speak, but PO Dalbero said to § 87(2)(b) “Shut your fucking mouth.” § 87(2)(b) did not move whatsoever. He told PO Dalbero that he had not been moving, and PO Dalbero unstrapped his holster, took hold of his gun, and removed the gun halfway from holster, so that the gun's muzzle was still inside of the holster. § 87(2)(b) did not move and PO Dalbero returned the gun fully into the holster without ever having completely removed it.

PO Dalbero denied that he ever removed his firearm partway from its holster or that he ever said to § 87(2)(b) “Shut your fucking mouth.”

PO Anzalone stated that PO Dalbero never said “Shut your fucking mouth” to § 87(2)(b) and that he did not witness PO Dalbero unstrap his holster or partially remove his gun from his holster. Likewise, Lt. Ryan did not witness PO Dalbero say “Shut your fucking mouth” to any civilian and did not remember any officer partially removing his gun from his holster.

§ 87(2)(b), § 87(2)(g)

Allegation R—Abuse of Authority: En route to the 120th Precinct stationhouse, Police Officer Rudy Anzalone questioned § 87(2)(b)

According to § 87(2)(b) after he and § 87(2)(b) were placed in handcuffs, PO Anzalone placed § 87(2)(b) in the rear of the unmarked RMP in which PO Anzalone and PO Dalbero had arrived. § 87(2)(b) went into another unmarked RMP which had arrived on scene. In the RMP with § 87(2)(b) were PO Anzalone, who drove, PO Dalbero, who rode in the rear with

§ 87(2)(b) and an officer identified by the investigation as Lt. Ryan. En route to the 120th Precinct stationhouse, PO Anzalone pulled over and parked the RMP. PO Anzalone then asked § 87(2)(b) if he knew about any guns, drugs, or other criminal activity taking place in the area. § 87(2)(b) said he had no such knowledge.

PO Anzalone was unsure which of the two prisoners he transported to the stationhouse. En route, he drove, Lt. Ryan rode in the passenger seat, PO Dalbero sat behind the driver seat, and the prisoner sat behind the front passenger seat. PO Anzalone stated that en route he may have asked a prisoner about guns, drugs, or other criminal activity in the rear, but he did not recall specifically. He explained that he believed he might have asked because he often debriefs prisoners to see if they have credible information that can assist in other investigations.

PO Dalbero stated that he, PO Anzalone, and Lt. Ryan transported one of the prisoners back to stationhouse. PO Dalbero stated that PO Anzalone did not ask the prisoner whom they transported if he had knowledge of guns, drugs, or other criminal activity going on in the area.

Lt. Ryan recalled that § 87(2)(b) and § 87(2)(b) were both transported to the 120th Precinct stationhouse for arrest processing, but he did not have any independent recollection of who transported whom. He did not recall transporting either arrestee. Lt. Ryan rode back to the stationhouse in the same RMP as PO Dalbero and PO Anzalone. Lt. Ryan did not remember if PO Anzalone asked § 87(2)(b) en route, if he had knowledge of guns, drugs, or other criminal activity going on in the area. According to Lt. Ryan, an arresting officer may often debrief an arrestee with questions of this nature en route to the stationhouse or at the stationhouse, but Lt. Ryan did not recall any such interaction taking place.

According to *People v. Hollman* 79 N.Y.2d 181 (Board Review 17), in order for an officer to inquire as to the possible criminality of § 87(2)(b) this that must be supported by founded suspicion that criminality is afoot.

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation S—Discourtesy: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero spoke discourteously to § 87(2)(b)

Allegation T—Abuse of Authority: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero threatened § 87(2)(b) with the use of force.

Allegation U— Abuse of Authority: En route to the 120th Precinct stationhouse, Police Officer Michael Dalbero questioned § 87(2)(b)

§ 87(2)(b) stated that after PO Anzalone questioned him, PO Dalbero told § 87(2)(b) that he could assist them “instead of being a dickhead.” PO Dalbero also said, “We can fuck you up,” and told § 87(2)(b) that the arrest was “bullshit.” PO Dalbero said that the officers were looking for more serious crimes and that they would let § 87(2)(b) go if he told them where they could find someone with more drugs or illegal guns. § 87(2)(b) told the officers that he did not have any information regarding any criminal activity.

PO Dalbero did not recall which prisoner they transported. He stated that he did not ask the prisoner whom they transported if he had knowledge of other criminal activity going on in the area. PO Dalbero did not say that the prisoner could help out “instead of being a dickhead,” did not say, “We can fuck you up,” and did not say that the arrest was “bullshit.”

PO Anzalone stated that PO Dalbero did not say that § 87(2)(b) could help the officers “instead of being a dickhead,” did not say, “We can fuck you up,” and did not say that the arrest was “bullshit.” PO Anzalone did not recall if PO Dalbero asked § 87(2)(b) about any other crimes taking place in the area.

Lt. Ryan did not recall PO Dalbero saying that § 87(2)(b) could help officers “instead of being a dickhead,” that the officers could “fuck him up,” or that the arrest was “bullshit.” He also did not recall PO Dalbero asking § 87(2)(b) about any other criminal activity. As noted above, he did not recall transporting any prisoner whatsoever.

§ 87(2)(b), § 87(2)(g)

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Squad: 1

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date